HOLOGRAPHIC WILLS—ACT VALIDATING CERTAIN WILLS ADMITTED TO PROBATE SINCE THE TAKING EFFECT OF THE CODE OF 1919.—The following was passed by the General Assembly of Virginia during its last session: [1]

"Whereas, the Code of Virginia, nineteen hundred and nineteen, requires that a holographic will shall be proved by at least two disinterested witnesses; and

Whereas, since the adoption of said Code of Virginia of nineteen hundred and nineteen, several such wills have been proved by one witness instead of two; therefore,

1. Be it enacted by the general assembly of Virginia, That the probate of all holographic wills admitted to probate in this State since the adoption of said Code of Virginia of nineteen hundred and nineteen, the handwriting of which have been proved by one witness instead of two, as prescribed by said Code, be, and the same is validated and made as binding and effectual as if the said wills had been proved according to said Code.
2. An emergency existing on account of the probate of the wills proved by one witness as aforesaid, there is declared to be an emergency, and as such this act shall be in force from its passage."

Prior to the Code of 1919, the law in Virginia required no particular number of witnesses nor any particular quality of evidence to prove a holographic will.[2] The Code of 1919, however, provides that, "If the will be wholly in the handwriting of the testator that fact shall be proved by at least two disinterested witnesses." [3]

It is important to note that the act of the Assembly of 1922 (*supra*) is wholly in the nature of a *nunc pro tunc* provision, having reference to, and affecting only, certain holographic wills admitted to probate upon the proof of one witness since the going into effect of the Code of 1919. It does not, therefore, dispense with, nor in any way disturb, the requirements prescribed by Section 5229 of the Code of 1919.

The law existing in Virginia before the Code of 1919, permitting a will in the handwriting of the testator to be admitted to probate without the proof of witnesses, was not the law of England, nor of the majority of the States. Whether it was proper or necessary in order to achieve substantial justice, thus to dispense with the provision of Section 5229 of the Code of 1919 in the particular cases to which the act of the 1922 Assembly had reference, is not called into question. It is submitted, however, that the law embodied in the Code of 1919, requiring the handwriting of the testator to be proved by two disinterested witnesses, is not only a very salutary

[1] Acts of Assembly, 1922, p. 547.
[2] V. C. 1904, § 2514.
[3] V. C. 1919, § 5229.

step forward, bringing Virginia into line with the majority of the other States; but moreover, that it provides an effective bar to the practice of fraud, and therefore should not be dispensed with lightly.

M. A. F.

DIVORCE—JURISDICTION OF SUITS FOR—SECTION 5105, CODE OF 1919, AS AMENDED AND RE-ENACTED BY THE GENERAL ASSEMBLY OF 1922.—The General Assembly of Virginia passed the following act in 1922, affecting jurisdiction of divorce suits:[1]

"1. Be it enacted by the general assembly of Virginia, That section fifty-one hundred and five of the Code of Virginia, be amended and re-enacted so as to read as follows:

Section 5105. Jurisdiction of suits to affirm or annul marriages, or to obtain divorces; when such suits are maintainable.—The circuit and corporation courts, on the chancery side thereof, and every court in this State exercising a chancery jurisdiction, shall have jurisdiction of suits for annulling or affirming marriage and for divorces. No suit for annulling a marriage or for divorce shall be maintainable, unless one of the parties is domiciled in, and is and has been an actual bona fide resident of this State for at least one year preceding the commencement of the suit; nor shall any suit for affirming a marriage be maintainable, unless one of the parties be domiciled in, and is and has been an actual bona fide resident of this State at the time of bringing such suit. The suit, in either case, shall be brought in the county or corporation in which the parties last cohabited, or (at the option of the plaintiff), in the county or corporation in which the defendant resides, if a resident of this State, and if not a resident, in the county or corporation in which the plaintiff resides."

This act supplements Section 5105 of the Code of 1919 by adding the words, "and is and has been an actual bona fide resident of this State". In the absence of judicial construction of this amendment, it is difficult to state with any degree of assurance, just what interpretation it will receive at the hands of the courts. However, one result of the change seems apparently clear; namely, that while under the former law it was necessary for the plaintiff to establish only his domicile, in order to confer jurisdiction upon the court, by force of the amended statute he is now required in addition, to prove an actual bona fide residence of one year. Formerly it was necessary to prove the *animus manendi,* while now the *fact* of bona fide residence must be established.

Although it is undoubtedly true that the act as amended will constitute an additional safeguard against the procuring of undeserved divorces, it is equally true that it will impose a burden upon some meritorious petitions.

T. M. B.

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[1] Acts of Assembly, 1922, p. 589.